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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,832	01/11/2001	Joseph A. Horton	MCRVT-023C	8538

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EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 07/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/758,832

Applicant(s)

Horton et al.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on May 20, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 102-131 is/are pending in the application.
- 4a) Of the above, claim(s) 126 and 131 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 102-125 and 127-130 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 and 8 6) ☐ Other: \_\_\_\_\_

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Applicant's election without traverse of the species of Figure 12 in Paper No. 7 is acknowledged.

Claims 126 and 131 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 7. First, it is noted that claims 103-132 have been renumbered as claims 102-131, respectively, since claim 101 was the highest numbered claim present in the file prior to the preliminary amendment as indicated in the previous Office Action. Thus, contrary to applicant's remarks, claim 131 (previously numbered claim 132) does not read on the elected species. Further, claim 126 does not read on the elected species since it is drawn to the species of figure 8 rather than the species of figure 12.

The disclosure is objected to because of the following informalities: In claim 102, line 6, "configuration" is misspelled. Appropriate correction is required.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The subject matter of claims 113 and 114 should be added to the specification.

Claims 110-118 and 128-130 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly

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point out and distinctly claim the subject matter which applicant regards as the invention. In claim 110, line 13, after "member", "embolus" should be deleted. In claim 111, step E cannot be performed before step C because step E defines the intravascular member as retaining the embolus member within the vessel wall defect. This cannot occur before the intravascular member has been expanded as recited in step C. Method claim 128 depends from apparatus claim 119 (formerly numbered 120).

Claims 104, 111-114, 121, 127-130 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As to claims 104 and 121, there is no basis in the original disclosure for the limitation that the intravascular member is pressure expandable and that it expands in response to the application of outwardly directed radial force thereupon. As to claims 111 and 112, there is no basis in the original disclosure for the claimed sequence of the steps. As to claim 127, there is no basis in the original disclosure for the limitation that apparatus decreases blood pressure within the defect. As to claim 128, there is no basis in the original disclosure for the limitation that apparatus decreases strain on the aneurysm.

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Claims 102-105, 108-111, 115, 116 and 118 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Forber et al. (5,733,294). Forber et al., in figures 9-10, shows an intravascular member 222, 223, 225 expandable to its radially expanded configuration where it engages the vessel wall (figure 10) and is held in a fixed position within the lumen of the blood vessel (Webster's II New Riverside University Dictionary defines "lumen" as "The inner open space of a tubular organ, as of a blood vessel or an intestine". Since the aneurysm 240 of Forber et al. is part of the open space of the blood vessel, it is part of the "lumen" in which the intravascular member 222, 223, 225 is held. Alternatively, the lower portion of the intravascular member 222, 223, 225, as seen in figure 10, is obviously within the top portion of the main or longitudinal lumen of the blood vessel.) adjacent to the vessel wall defect 240 and embolus member (one of the filaments 230), the intravascular member preventing the embolus member from escaping from the vessel wall defect (col. 6, lines 23-24). As to claim 104, the Forber et al. intravascular member is inherently pressure expandable since radial force applied to it would expand it.

Claims 106, 107 and 117 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forber et al. (5,733,294). As to claim 106, it was well known in this art to include a coating on the exterior of occlusion devices in order to make them more compatible

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with the body, for example. Including such a coating on the Forber et al. intravascular member would have been obvious for this reason. Such a coating would be the claimed outer layer. As to claim 117, placing the Forber et al. in a cerebral aneurysm would have been obvious since a cerebral aneurysm is a well known type of aneurysm in need of an occlusion device.

Claims 119, 120, 122 and 127 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sawyer (5,108,417). Sawyer shows an intravascular flow modifier which modifies blood flow by increasing the speed of the blood and decreasing the blood pressure (col. 4, lines 36-54). Alternatively, the central portion of the Sawyer stent may obviously be considered to be a flow modifying region for this reason. The constriction at the vessel wall is the claimed vessel wall defect.

Claims 121, 123-125 and 128-130 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawyer (5,108,417). As to claims 121 and 125, making the Sawyer stent either pressure expandable or of a shape memory alloy in order to expand it in a controlled fashion would have been obvious since it was well known to so expand stents. As to claim 123, it was well known in this art to include a coating on the exterior stents in order to make them more compatible with the body, for example. Including such a coating on the Sawyer stent would have been obvious for this reason. Such a

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coating would be the claimed outer layer. As to claim 128, it was well known in this art to locate a stent near an aneurysm since blood vessel occlusions sometimes are located near aneurysms.

Claims 112-114 are free of any rejection based upon the prior art of record.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

mht  
July 11, 2002  
FAX (703) 305-3590



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731